

**BEST AVAILABLE COPY**RECEIVED  
CENTRAL FAX CENTER

FEB 15 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/090,888 Confirmation No.: 6489  
Applicant(s): Bantz et al.  
Filed: 3/4/2002  
Art Unit: 2646  
Examiner: Ni, Suhan  
Title: Automatic Audio Adjustment System Based Upon a User's  
Auditory Profile  
Attorney Docket No.: YOR920010527US1  
Customer No.: 29,683

Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Petition To Commission(37 C.F.R. §1.181)

Sir:

This is a petition under 37 C.F.R. §1.181 to invoke the  
supervisory authority of the Commissioner.

Statement Of Facts

1. In an office action mailed 04/07/2004 the examiner issued  
a three-way restriction. The three Groups of claims were  
specified as follows:

I. Claims 1-14 and 23-29

II. Claims 15-18

III. Claims 19-22

Appl. No.: 10/090,888

2. In a response filed 05/06/2004 applicants' attorney elected Group I (claims 1-14 and 23-29), cancelled claims 15-22 and added claims 30-37 directed to the invention of Group I.

3. In an office action mailed 07/21/2004 the examiner restricted out claims 30-37 stating that they were drawn to a non-elected invention.

4. In an amendment mailed 10/08/2004, the examiner was requested to reconsider his restriction, and claims 38-40 were added directed to the invention of Group I.

5. In an office action mailed 02/23/2005 the examiner restricted out claims 30-40 stating that they were drawn to a non-elected invention.

6. In an amendment filed 04/12/2005 the examiner was requested to reconsider his restriction.

7. In an office action mailed 08/09/2005 the examiner issued a restriction. The Groups of claims were specified as follows:

I. Claims 1-14 and 30-37

II. Claims 23-29

III. Claims 38-40 (stating that they were drawn to a non-elected invention)

8. In a Response filed on 09/09/2005 Applicant's Attorney elected Group I (Claims 1-14 and 30-37), but with traverse.

9. In an office action mailed 12/19/2005, the examiner withdrew his restriction regarding Groups I and II, but continued his restriction regarding Group III (Claims 38-40).

Appl. No.: 10/090,888

Point To Be Reviewed

Is the restriction of claims 38-40 separate from claims 1-14 and 23-37 proper?

Action Requested

The Assistant Commissioner For Patents is requested to reverse the restriction requirement regarding the restriction of the claims 38-40 and direct the examiner to examine claims 38-40.

**Discussion**

In regard to claims 38-40, the examiner has pointed to no justifiable reason why those claims are directed to a separate independent or distinct invention from the invention of claims 1-14 and 30-37. The examiner stated:

“Newly submitted claims 38-40 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the limitation of “the transmitter unit is adapted to automatically send the signal to the receiver without user activation” is not originally presented in the claim(s).”

Merely because claims 38-40 have a feature not originally in claims 1-14 and 30-37 does not mean they are necessarily separate independent or distinct inventions. Claims 38-40 do not appear to be independent or distinct from the invention of claims 1-14 and 30-37 such that two patents should be issued.

Appl. No.: 10/090,888

In the first office action mailed 04/07/2004 the examiner stated that claims 1-14 and 23-29 were drawn to the structures/structural elements of a system for adjusting an acoustic output. Claim 38 claims:

38. A system for adjusting audio output comprising:

a transmitter unit adapted to be carried by a user, the transmitter unit comprising a memory and a signal transmitter; and

a sound generating system comprising a sound generator adapted to output sound signals based upon input data, a signal receiver, an altering system for altering the sound signals from the sound generator based upon a signal transmitted by the transmitter to the receiver, and at least one acoustic transducer/speaker coupled to the altering system,

wherein the transmitter unit is adapted to automatically send the signal to the receiver without user activation.

Claim 1 as originally filed claims:

1. A system for adjusting audio output comprising:

a transmitter unit adapted to be carried by a user, the transmitter unit comprising a memory and a signal transmitter; and

a sound generating system comprising a sound generator, a signal receiver, means for altering a sound signal from the signal generator based upon a signal transmitted by

Appl. No.: 10/090,888


the transmitter to the receiver, and at least one acoustic transducer coupled to the altering means.

The examiner has pointed to no justifiable reason, as required by the MPEP, why the addition of "wherein the transmitter unit is adapted to automatically send the signal to the receiver without user activation" in claim 38 is an invention that is independent or distinct from claim 1 as originally filed. The examiner has not fulfilled the requirements of MPEP 808.01 and 808.02. The claims are not independent inventions as defined in MPEP 806.06, the examiner has shown that they are patentably distinct, and the examiner has not shown that there would be a serious burden on the examiner if restriction is not required.

#### Summary

The examiner has not established as required by MPEP 808 et seq. that claims 38-40 are independent or distinct from claims 1-14 and 23-37. Therefore, the Assistant Commission is requested to direct the examiner to examine claims 38-40.

Respectfully submitted,

  
Mark F. Harrington (Reg. No. 31,686)

2/15/06  
Date

Customer No.: 29683  
Harrington & Smith, LLP  
4 Research Drive  
Shelton, CT 06484-6212  
203-925-9400

Appl. No.: 10/090,888

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

2/15/2006  
Date

Charles F. Mason  
Name of Person Making Deposit

**This Page is Inserted by IFW Indexing and Scanning  
Operations and is not part of the Official Record**

**BEST AVAILABLE IMAGES**

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☐ BLACK BORDERS
- ☐ IMAGE CUT OFF AT TOP, BOTTOM OR SIDES
- ☐ FADED TEXT OR DRAWING
- ☐ BLURRED OR ILLEGIBLE TEXT OR DRAWING
- ☐ SKEWED/SLANTED IMAGES
- ☐ COLOR OR BLACK AND WHITE PHOTOGRAPHS
- ☐ GRAY SCALE DOCUMENTS
- ☒ LINES OR MARKS ON ORIGINAL DOCUMENT
- ☐ REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY
- ☐ OTHER: \_\_\_\_\_

**IMAGES ARE BEST AVAILABLE COPY.**

**As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.**